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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 751

EMILY V. HURLEY, ET AL., PETITIONERS

v.

SAMUEL S. LOWE, DEPUTY COMMISSIONER, BUREAU OF EMPLOYEES' COMPENSATION, FEDERAL SECURITY AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

OPINIONS BELOW

The district court wrote no opinion (R. 13-14). The opinion of the court of appeals (R. 15-18) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered March 15, 1948 (R. 19). The petition for a writ of certiorari was filed April 19, 1948. The

jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended.

QUESTION PRESENTED

During a business trip away from home, taken in connection with his employers' business, the deceased, a lawyer employed by a law firm in the District of Columbia, dined at a restaurant with his parents who lived near one of the cities visited. During dinner the employee accompanied his elderly father to assist him down a short flight of steps to the washroom on a lower floor. While thus assisting his father, the employee fell down the steps and sustained an injury which resulted in his death. The question presented is whether the court below properly accorded finality to the deputy commissioner's finding that the employee's "injury and death was not the result of an accidental injury which arose out of and in the course of his employment" within the meaning of the Longshoremen's and Harbor Workers' Compensation Act, as applied to the District of Columbia.[1]

STATUTES INVOLVED

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat.

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[1] Although a question under Section 10(e) of the Administrative Procedure Act is asserted, it is submitted that none is really presented. The basic question raised is whether the scope of review as defined by this Court in *Cardillo* v. *Liberty Mutual Co.*, 330 U. S. 469, was properly assessed by the court below. It cannot seriously be urged that the standards of review prescribed in the Longshoremen's and Harbor Workers' Act, as interpreted by this Court's decision in the *Cardillo* case, violate the standards of the Administrative Procedure Act.

1424; 33 U. S. C. 901 *et seq.*), and of the District of Columbia Workmen's Compensation Law (45 Stat. 600, Sec. 1, D. C. Code, 1940, Title 36, Sec. 501), are set forth in the Appendix, pp. 9-10.

STATEMENT

This action was brought under Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act to compel respondent to award compensation to petitioners for the death of George F. Hurley (R. 1-5). The facts, which were stipulated (R. 6-8), are substantially as follows: On December 12, 1945, the decedent, employed as an attorney by a Washington law firm, proceeded to New York, Boston, and Holyoke on firm business (R. 6). After completing his business in New York, he left for Boston the evening of December 12th, arrived at Boston that night, and went to the home of his parents in a Boston suburb where he spent the night (R. 6). On the following day he transacted additional business and in the evening had dinner with his parents at a Boston restaurant (R. 6). His parents and himself were the only ones present at this dinner, which "was not related to George F. Hurley's employment in any way, but on the contrary * * * was a family reunion of a purely social character" (Stipulation, R. 6).[2] During the course of the dinner, the

[2] The court below made the following comment with respect to this portion of the stipulation: "Whatever may be the explanation of the stipulation, it is not conceivable that it meant 'not in the course of employment' in the statutory sense, because that was the sole basis of the claim. We do not understand that the Deputy Commissioner

decedent accompanied his father, who was 81 years of age, to the washroom on a lower floor in order to assist him down a short flight of steps (R. 3, 6-7). While thus assisting his father, the deceased slipped and fell down the stairs striking his head on the cement floor, thereby sustaining a skull fracture which resulted in his death nine hours later (R. 7).

A claim for compensation under the District of Columbia Workmen's Compensation Act was rejected by the deputy commissioner for the reason that the "death of deceased herein was not the result of accidental injury which arose out of and in the course of his employment" (R. 10, 11). A proceeding under Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act was thereupon instituted in the United States District Court for the District of Columbia (R. 1-5). The judgment of the district court dismissing the complaint for failure to state a cause of action (R. 14) was affirmed on appeal (R. 19). In sustaining the denial of an award, the court below held that under this Court's decision in *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U. S. 469, it was not at liberty to overturn the deputy commissioner's determination since it was unable to say that his view

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treated that stipulation as a concession of the whole case" (R. 18, n. 10). It made no comment in respect of the following allegation of the complaint: "that the dinner which occasioned deceased's presence in the restaurant at the time of his injury was not related to his employment but was of a social character and that his injury and death was not the result of an accidental injury which arose out of and in the course of his employment" (R. 4).

was either forbidden by law or without any reasonable legal basis (R. 18).

ARGUMENT

1. The appropriate scope of judicial review of the deputy commissioners' determinations under the Longshoremen's and Harbor Workers' Compensation Act was recently set forth at some length by this Court in *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U. S. 469. There this Court held, reaffirming its earlier decisions in *Voehl* v. *Indemnity Insurance Co.*, 288 U. S. 162, and *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244, that the findings of the deputy commissioner with respect to whether an injury arose out of and in the course of employment are conclusive upon a reviewing court if they are supported by evidence and have a reasonable basis in law. Nothwithstanding the contrary intimations of the court below, the present case does not appear to furnish any occasion for the further refinement of the principles there announced. The *Cardillo* case did no more than reiterate the recognized rule governing judicial review of administrative decisions. See page 478 at which the *Cardillo* case relies upon *Labor Board* v. *Hearst Publications*, 322 U. S. 111, 131; *Commissioner* v. *Scottish American Co.*, 323 U. S. 119, 124; and *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143, 153-154. As hereinafter indicated, the denial of compensation by the deputy commissioner under the facts of the instant case,

was not without "rational basis." See *Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 146, and cases cited. Moreover, the peculiar circumstances here involved—accidental injury while accompanying one's elderly parent to the washroom during the course of a business trip—do not warrant review by this Court.

2. Although the court below seems to have reached its conclusion somewhat reluctantly, the decision is clearly correct. It matters not that the basic facts from which the deputy commissioner draws his inference are undisputed rather than controverted. Cf. *Boehm* v. *Commissioner,* 326 U. S. 287, 293. "It is likewise immaterial that the facts permit the drawing of diverse inferences." *Cardillo* v. *Liberty Mutual Co.,* 330 U. S. at 478. The inference drawn in the instant case is "supported by evidence and not inconsistent with the law "and is therefore" conclusive." *Id* at 477. The deputy commissioner's inference from the undisputed facts that his employment did not expose decedent to the risk of falling while escorting his father to the washroom (cf. *Marks' Dependents* v. *Gray,* 251 N. Y. 90 (1929) (opinion by Cardozo, C. J.)) cannot be said to be without support in the evidence.[3] The reasonableness of the deputy com-

[3] Petitioner's contention (Pet. p. 9) that the finding of the deputy commissioner failed to give effect to the presumption of coverage set forth in Section 20 of the Act is without merit. The findings of the deputy commissioner, if supported by substantial evidence, are not affected by the presumptions specified in Section 20. Those

missioner's determination is further attested by the decisions of numerous state courts which have reached the same conclusion with respect to accidents, less tenuously related to employment, while dining on a business trip. *Johnson* v. *Smith,* 263 N. Y. 10, 188 N. E. 140 (1933); *Wynn* v. *Southern Surety Company,* 26 S. W. (2d) 691 (Tex. Civ. App. 1930); *Baron* v. *Norton & Company,* 264 App. Div. 802 (N. Y. 1942); *Paulin* v. *Williams & Co.,* 327 Pa. 579, 195 A. 40 (1937); *Scott Tobacco Company* v. *Cooper,* 258 Ky. 795, 81 S. W. (2d) 588 (1934). The fact that other courts have reached a different conclusion in comparable circumstances (see, *e.g., Thornton* v. *Hartford Accident & Indemnity Co.,* 198 Ga. 786 (1945)) does not deprive the deputy commissioner's conclusion of the "factual and legal support" which puts the reviewing court's "task * * * at an end." *Cardillo* v. *Liberty Mutual Co.,* 330 U. S. at 479.

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presumptions do not constitute affirmative evidence and lose their effect when evidence tending to support the deputy commissioner's finding has been introduced. *Del Vecchio* v. *Bowers,* 296 U. S. 280, 286.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1948

APPENDIX

1. The Act of May 17, 1928 (District of Columbia Workmen's Compensation Law), Sec. 1 (c. 612, 45 Stat. 600, D. C. Code, 1940, Title 36, Sec. 501) provides:

> the provisions of the Act entitled "Longshoremen's and Harbor Workers' Compensation Act," approved March 4, 1927, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

2. The Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*) provides in part:

> DEFINITIONS
>
> SEC. 2. When used in this Act—
>
> * * * * *
>
> (2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such em-

ployment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

* * * * *

REVIEW OF COMPENSATION ORDERS

SEC. 21.

* * * * *

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise brought by any party in interest against the deputy commissioner making the order, and insituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). * * *

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